

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

1 Jul 22, 2020
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SEAN F. McAVOY, CLERK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ATANU MUKHERJEE,

Plaintiff,

v.

WASHINGTON STATE
UNIVERSITY,

Defendant.

No. 2:19-cv-00402-SMJ

**ORDER DENYING
DEFENDANT'S MOTION FOR
PROTECTIVE ORDER AND
PARTIES' STIPULATION WITH
LEAVE TO RENEW**

Before the Court, without oral argument, are Defendant's Motion and Memorandum for Protective Order, ECF No. 15, and the Stipulation of Parties, ECF No. 17. Defendant originally moved the Court "for entry of an order determining whether documents and information sought by Plaintiff Mukherjee through discovery are discoverable and setting the terms and conditions for disclosure, if any." ECF No. 15 at 1. The parties also submitted a Stipulation of Parties indicating that the parties stipulate "to the confidential and/or privileged nature of the records the Plaintiff now seeks and to be bound by the terms and conditions of the proposed protective order." ECF No. 17 at 1. Having reviewed the motion and the file in this matter, the Court is fully informed and denies the motion with leave to renew.

1 As a preliminary matter, the parties are reminded that the question of whether
2 information is discoverable is the appropriate subject of a motion to compel
3 discovery. However, because the parties agree that the information sought is
4 discoverable, the Court understands that this issue is moot¹ and the Motion and
5 Memorandum for Protective Order is denied as to this requested relief.

6 As to the request for a protective order, the parties agree that Plaintiff will
7 “be bound by the terms and conditions of the proposed protective order.” ECF
8 No. 17 at 1. However, Defendant’s Motion and Memorandum for Protective Order
9 contains no proposed protective order. *See* ECF No. 15. Nor does the declaration of
10 counsel filed concurrently therewith. *See* ECF No. 16. Defendant’s Motion and
11 Memorandum for Protective Order seems to imply that the Court should draft the
12 terms of the protective order from whole cloth. *See* ECF No. 15 at 3 (“[T]he Court
13 should decide if the information and/or documents sought by Plaintiff Mukherjee
14 should be provided, and if so, under what terms and conditions.”). However, this
15 contradicts the Stipulation of Parties, which indicates the parties have stipulated to
16 specific terms of a proposed protective order. ECF No. 17 at 1. It is therefore unclear
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18 ¹ Defendant’s Motion and Memorandum for Protective Order, ECF No. 15, and the
19 Stipulation of Parties, ECF No. 17, were filed concurrently. *See* ECF No. 15 (“The
20 motion is supported by the memorandum of authorities supporting the Defendants’
Motion for Protective Order, the Declaration of Joseph Ehle re: Motion for
Protective Order, and the Stipulation of Parties.”). It is unclear why the parties
dispute the discoverability of the information in one filing and agree to its
discoverability in another.

1 whether there is a dispute and, if there is a dispute, what relief the parties are
2 seeking.

3 If the parties have stipulated to the terms of a protective agreement, they may
4 file a renewed motion for a protective order with the stipulated protective order
5 attached for the Court's review. If the parties dispute the appropriate terms of a
6 protective order, then they should file an appropriate motion, which must
7 specifically describe what information is being sought, the legal protections each
8 party asserts should apply, and the arguments each party relies on in taking its
9 respective position with regard to that information.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 Defendant's Motion and Memorandum for Protective Order, **ECF**
12 **No. 15**, and the Stipulation of Parties, **ECF No. 17**, are **DENIED**
13 **WITH LEAVE TO RENEW.**

14 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
15 provide copies to all counsel.

16 **DATED** this 22nd day of July 2020.

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18 SALVADOR MENDEZA, JR.
United States District Judge